

**FAIR EMPLOYMENT AND HOUSING ACT**  
**[Government Code, Title 2, Division 3, Part 2.8]**

**Chapter 1**  
**GENERAL PROVISIONS**

**§12900. Short Title**

This part may be known and referred to as the "California Fair Employment and Housing Act."

**§12901. Department; executive officer; appointment; salary**

There is in the state government, in the State and Consumer Services Agency, the Department of Fair Employment and Housing. The department is under the direction of an executive officer known as the Director of Fair Employment and Housing, who is appointed by the Governor, subject to confirmation by the Senate, and who holds office at the pleasure of the Governor. The annual salary of the director is provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2.

**§12902. Director as department head; law governing**

The provisions of Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 apply to the director and the director is the head of a department within the meaning of such chapter.

**§12903. Commission; membership; appointment; chairman; term; members of fair employment practice commission as members of new commission**

There is in the State and Consumer Services Agency the Fair Employment and Housing Commission. The commission shall consist of seven members, to be known as commissioners, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated as chairman by the Governor. The term of office of each member of the commission shall be for four years.

**§12904. Commission; vacancies; quorum**

Any member chosen to fill a vacancy on the commission occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed. Four members of the commission shall constitute a quorum for the purpose of conducting the business thereof.

#### **§12905. Commission; compensation; expenses**

Each member of the commission shall serve without compensation but shall receive one hundred dollars (\$100) for each day actually spent in the performance of his or her duties under this part and shall also be entitled to his or her expenses actually and necessarily incurred in the performance of his or her duties.

#### **§12906. Commission; removal of members; grounds**

Any member of the commission may be removed by the Governor for inefficiency, for neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

### **Chapter 2 SUCCESSION TO FUNCTIONS AND RESPONSIBILITIES**

**(Repealed by AB 418; effective January 1, 1990)**

### **Chapter 3 FINDINGS AND DECLARATIONS OF POLICY**

#### **§12920. Public policy; employment rights and opportunities; housing; purpose; police power**

It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for these reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interest of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, or sexual orientation in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

#### **§12920.5. Effective remedies; Legislature's authority**

In order to eliminate discrimination, it is necessary to provide effective remedies that will both prevent and deter unlawful employment practices and redress the adverse effects of those practices on aggrieved persons. To that end, this part shall be deemed an exercise of the Legislature's authority pursuant to Section 1 of Article XIV of the California Constitution.

#### **§12921. Civil rights; employment and housing without discrimination**

(a) The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right.

#### **§12922. Restrictions on eligibility for employment; religious corporations**

Notwithstanding any other provision of this part, an employer that is a religious corporation may restrict eligibility for employment in any position involving the performance of religious duties to adherents of the religion for which the corporation is organized.

### **Chapter 4 DEFINITIONS**

#### **§12925. Commission; commissioner; department; director; person**

As used in this part, unless a different meaning clearly appears from the context:

(a) "Commission" means the Fair Employment and Housing Commission and "commissioner" means a member of the commission.

(b) "Department" means the Department of Fair Employment and Housing.

(c) "Director" means the Director of Fair Employment and Housing.

(d) "Person" includes one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries.

#### **§12926. Additional definitions**

As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of back pay, reimbursement of out-of-pocket expenses, hiring, transfer, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

"Employer" does not include a religious association or corporation not organized for private profit.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) "Reasonable accommodation" may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(p) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. "Sex" also includes, but is not limited to, a person's gender, as defined in Section 422.56 of the Penal Code.

(q) "Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

(r) "Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(s) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.



(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.

(5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

**§12926.1. Legislative findings and declarations; disability, mental disability, and medical condition; broad coverage under state law; interaction in determining reasonable accommodation**

The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

(d) Notwithstanding any interpretation of law in *Cassista v. Community Foods* (1993) 5 Cal.4<sup>th</sup> 1050, the Legislature intends (1) for state law to be independent of the Americans with Disabilities Act of 1990, (2) to require a "limitation" rather than a "substantial limitation" of a major life activity, and (3) by enacting paragraph (4) of subdivision (i) and paragraph (4) of subdivision (k) of Section 12926, to provide protection when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity.

(e) The Legislature affirms the importance of the interactive process between the applicant or employee and the employer in determining a reasonable accommodation, as this requirement has been articulated by the Equal Employment Opportunity Commission in its interpretive guidance of the Americans with Disabilities Act of 1990.

## **§12926.2. Unlawful practices; religious corporations and religious duties defined**

As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) “Religious corporation” means any corporation formed under, or otherwise subject to, Part 4 (commencing with Section 9110) or Part 6 (commencing with Section 10000) of Division 2 of Title 1 of the Corporations Code, and also includes a corporation that is formed primarily or exclusively for religious purposes under the laws of any other state to administer the affairs of an organized religious group and that is not organized for private profit.

(b) “Religious duties” means duties of employment connected with carrying on the religious activities of a religious corporation or association.

(c) Notwithstanding subdivision (d) of Section 12926 and except as otherwise provided in subdivision (d) of this section, “employer” includes a religious corporation or association with respect to persons employed by the religious association or corporation to perform duties, other than religious duties, at a health care facility operated by the religious association or corporation for the provision of health care that is not restricted to adherents of the religion that established the association or corporation.

(d) “Employer” does not include a religious corporation with respect to either the employment, including promotion, of an individual of a particular religion, or the application of the employer’s religious doctrines, tenets, or teachings, in any work connected with the provision of health care.

(e) Notwithstanding subdivision (d) of Section 12926, “employer” does not include a nonprofit public benefit corporation incorporated to provide health care on behalf of a religious organization under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, with respect to employment, including promotion, of an individual of a particular religion in an executive or pastoral-care position connected with the provision of health care.

(f) (1) Notwithstanding any other provision of law, a nonprofit public benefit corporation formed by, or affiliated with, a particular religion and that operates an educational institution as its sole or primary activity, may restrict employment, including promotion, in any or all employment categories to individuals of a particular religion.

(2) Notwithstanding paragraph (1) or any other provision of law, employers that are nonprofit public benefit corporations specified in paragraph (1) shall be subject to the

provisions of this part in all other respects, including, but not limited to, the prohibitions against discrimination made unlawful employment practices by this part.

### **§12927. Housing accommodations; definitions**

As used in this part in connection with housing accommodations, unless a different meaning clearly appears from the context:

(a) "Affirmative actions" means any activity for the purpose of eliminating discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.

(b) "Conciliation council" means a nonprofit organization, or a city or county human relations commission, which provides education, factfinding, and mediation or conciliation services in resolution of complaints of housing discrimination.

(c) (1) "Discrimination" includes refusal to sell, rent, or lease housing accommodations; includes refusal to negotiate for the sale, rental, or lease of housing accommodations; includes representation that a housing accommodation is not available for inspection, sale, or rental when that housing accommodation is in fact so available; includes any other denial or withholding of housing accommodations; includes provision of inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations; includes harassment in connection with those housing accommodations; includes the cancellation or termination of a sale or rental agreement; includes the provision of segregated or separated housing accommodations; includes the refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification (other than for reasonable wear and tear), and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(2) "Discrimination" does not include either of the following:

(A) Refusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or boarder living within the household, provided that no more than one roomer or boarder is to live within the household, and the owner complies with subdivision (c) of Section 12955, which prohibits discriminatory notices, statements, and advertisements.

(B) Where the sharing of living areas in a single dwelling unit is involved, the use of words stating or tending to imply that the housing being advertised is available only to persons of one sex.

(d) "Housing accommodation" means any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families and any vacant land that is offered for sale or lease for the construction thereon of any building, structure, or portion thereof intended to be so occupied.

(e) "Owner" includes the lessee, sublessee, assignee, managing agent, real estate broker or salesperson, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and includes the state and any of its political subdivisions and any agency thereof.

(f) "Person" includes all individuals and entities that are described in Section 3602(d) of Title 42 of the United States Code, and in the definition of "owner" in subdivision (e) of this section, and all institutional third parties, including the Federal Home Loan Mortgage Corporation.

(g) "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur.

(h) "Real estate-related transactions" include any of the following:

(1) The making or purchasing of loans or providing other financial assistance that is for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or that is secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(3) The use of territorial underwriting requirements, for the purpose of requiring a borrower in a specific geographic area to obtain earthquake insurance, required by an institutional third party on a loan secured by residential real property.

#### **§12928. Identity of employer; rebuttable presumption**

Notwithstanding any other provision of this part, there is a rebuttable presumption that "employer," as defined by subdivision (d) of Section 12926, includes any person or entity identified as the employer on the employee's Federal Form W-2 (Wage and Tax Statement).

## **Chapter 5 POWERS AND DUTIES**

### **Article 1**

#### **THE DEPARTMENT**

##### **§12930. Functions, powers and duties**

The department shall have the following functions, powers, and duties:

(a) To establish and maintain a principal office and any other offices within the state as are necessary to carry out the purposes of this part.

(b) To meet and function at any place within the state.

(c) To appoint attorneys, investigators, conciliators, and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To obtain upon request and utilize the services of all governmental departments and agencies and, in addition, with respect to housing discrimination, of conciliation councils.

(e) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the functions and duties of the department pursuant to this part.

(f) (1) To receive, investigate, and conciliate complaints alleging practices made unlawful pursuant to Chapter 6 (commencing with Section 12940).

(2) To receive, investigate, and conciliate complaints alleging a violation of Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code. The remedies and procedures of this part shall be independent of any other remedy or procedure that might apply.

(g) In connection with any matter under investigation or in question before the department pursuant to a complaint filed under Section 12960, 12961, or 12980:

(1) To issue subpoenas to require the attendance and testimony of witnesses and the production of books, records, documents, and physical materials.

(2) To administer oaths, examine witnesses under oath and take evidence, and take depositions and affidavits.

(3) To issue written interrogatories.

(4) To request the production for inspection and copying of books, records, documents, and physical materials.

(5) To petition the superior courts to compel the appearance and testimony of witnesses, the production of books, records, documents, and physical materials, and the answering of interrogatories.

(h) To issue accusations pursuant to Section 12965 or 12981 and to prosecute those accusations before the commission.

(i) To issue those publications and those results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in employment on the bases enumerated in this part and discrimination in housing because of race, religious creed, color, sex, marital status, national origin, ancestry, familial status, disability, or sexual orientation.

(j) To investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor to be engaged in pursuant to Section 12990.

(k) To render annually to the Governor and to the Legislature a written report of its activities and of its recommendations.

**§12931. Assistance to communities and persons; resolutions of disputes, disagreements and difficulties relating to discriminatory practices; requests**

The department may also provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, familial status, age, or sexual orientation that impair the rights of persons in those communities under the Constitution or laws of the United States or of this state. The services of the department may be made available in cases of these disputes, disagreements, or difficulties only when, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby. The department's services are to be made available only upon the request of an appropriate state or local public body, or upon the request of any person directly affected by any such dispute, disagreement, or difficulty.

The assistance of the department pursuant to this section shall be limited to endeavors at investigation, conference, conciliation, and persuasion.

**§12932. Legislative recognition; employment of disabled persons; conciliation assistance; confidentiality; disciplinary action**

(a) The Legislature recognizes that the avoidance of discriminatory practices in the employment of disabled persons is most effectively achieved through the ongoing efforts of state agencies involved in the vocational rehabilitation and job placement of the disabled. The department may utilize the efforts and experience of the Department of Rehabilitation in the development of job opportunities for the disabled by requesting the Department of Rehabilitation to foster good will and to conciliate on employment policies with employers who, in the judgment of the department, have employment practices or policies that discriminate against disabled persons. Nothing contained in this paragraph shall be construed to transfer any of the functions, powers, or duties from the department to the Department of Rehabilitation.

(b) The activities of the department in providing conciliation assistance shall be conducted in confidence and without publicity, and the department shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held.

(c) No employee of the department shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he or she acted on behalf of the department. Any employee of the department, who makes public in any manner whatever any information in violation of this subdivision, is guilty of a misdemeanor and, if a member of the state civil service, shall be subject to disciplinary action under the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2).

(d) When contacted by the department, employers, labor organizations, or employment agencies shall be informed whether a particular discussion, or portion thereof, constitutes either of the following:

(1) Endeavors at conference, conciliation, and persuasion which may not be disclosed by the department or received in evidence in any formal hearing or court action.

(2) Investigative processes, which are not so protected.

### **§12933. Liaison with human relations commissions**

The department shall maintain liaison with the human relations commissions of cities, counties, and any city and county, and shall provide any information not designated by law as confidential to such commissions on request.

## **Article 2**

### **THE COMMISSION**

### **§12935. Functions, powers and duties**

The commission shall have the following functions, powers, and duties:

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply all provisions of this part, (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12981, and (3) to carry out all other functions and duties of the commission pursuant to this part.

(b) To conduct hearings pursuant to Sections 12967 and 12981.

(c) To conduct mediations at the request of the department at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may withdraw a request for mediation at anytime to pursue an investigation.

(d) To establish and maintain a principal office within the state and to meet and function at any place within the state.

(e) To appoint an executive secretary, and any attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(g) To create or provide financial or technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination because of race, religious creed, color, national origin, ancestry, familial status, disability, marital status, sex, or sexual orientation and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the commission for the development of policies and procedures in general. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(h) With respect to findings and orders made pursuant to this part, to establish a system of published opinions that shall serve as precedent in interpreting and applying the provisions of this part. Commission findings, orders, and opinions in an adjudicative proceeding are subject to Section 11425.60.

(i) To issue publications and results of inquiries and research that in its judgment will tend to promote good will and minimize or eliminate unlawful discrimination. These



publications shall include an annual report to the Governor and the Legislature of its activities and recommendations.

(j) Notwithstanding Sections 11370.3 and 11502, to appoint administrative law judges, as it may deem necessary, to conduct hearings. Each administrative law judge shall possess the qualifications established by the State Personnel Board for the particular class of position involved. The hearing officers of the commission shall become administrative law judges on the effective date of this subdivision.

## **Chapter 6 DISCRIMINATION PROHIBITED**

### **Article 1**

#### **UNLAWFUL PRACTICES, GENERALLY**

##### **§12940. Employers, labor organizations, employment agencies and other persons; unlawful employment practice; exceptions**

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject

an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(5) Nothing in this part prohibits an employer from refusing to employ an individual because of his or her age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or

indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or any intent to make any such limitation, specification or discrimination. Nothing in this part prohibits an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, where the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make an inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any

practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4)(A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable

accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

**§12940.1. Individuals with heart trouble; firefighting or law enforcement activities; presumption of inability to perform; burden of proof to overcome presumption**

For the purposes of paragraph (1) of subdivision (a) of Section 12940, it shall be presumed that an individual with heart trouble, as referred to in Section 3212 of the Labor Code, applying for either a firefighter position or participation in an apprenticeship training program leading to employment in that position, where the actual duties require physical, active fire suppression, or a law enforcement position, the principal duties of which clearly consist of active law enforcement, could not perform his or her duties in a manner which would not endanger his or her health or safety or the health or safety of others. This presumption may be overcome by the applicant or the department proving, by a preponderance of the evidence, that the applicant would be able to safely perform the job. Law enforcement, for the purposes of this section, means police officer, deputy sheriff, or sheriff whose principal duties consist of active law enforcement service.

**§12940.3. Americans with Disabilities Act; study; cost of compliance; analysis of benefits; legislative intent**

Prior to January 1, 1996, a study or survey of the costs, including litigation and reasonable accommodation expenses and other impacts on California employers of 15 or more employees, resulting from compliance with Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336)<sup>1</sup>, shall be undertaken jointly by the California Chamber of Commerce, the Department of Fair Employment and Housing, Protection and Advocacy, Inc., and the State Department of Rehabilitation. The study shall also include an analysis of the benefits of the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) to persons with disabilities. The results of the study shall be submitted to the Commission on Special Education for their review and recommendations. The study shall provide a basis for a recommendation to the Legislature and the Governor concerning whether the hardships imposed upon businesses outweigh the benefits to persons with disabilities when the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) are extended to California employers of 5 to 14, inclusive, employees by amending the Fair Employment and Housing Act to include people with mental disabilities as a protected class. In conducting the study and making a recommendation, the parties shall consider whether the additional requirements or

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<sup>1</sup> 42 U.S.C.A. § 12101 et seq.

consequences of being subject to the additional requirements will impose a significant hardship on employers of 5 to 14, inclusive, employees.

It is the intent of the Legislature that if, at the conclusion of the study and report to the Legislature, it is determined that employers of between 5 and 14 employees would not have a significant hardship in implementing the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336), legislation should be introduced to require that employers with between 5 and 14 employees are covered by the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336).

The Legislature intends that all employers, including employers of 5 to 14, inclusive, employees, voluntarily comply with the requirements of Title I of the Americans with Disabilities Act of 1990 (Public Law 101-336) so that persons with mental disabilities can participate fully in the employment opportunities provided to all Californians. However, it is the intent of the Legislature that existing employment discrimination provisions covering employers of 5 to 14, inclusive, employees shall not be altered by the amendments to this part that become effective on January 1, 1993.

**§12941. Age discrimination; use of salary as method of differentiating between employees (*effective January 1, 2003, AB 1599 repealed the former section 12941 and 12941.1 was renumbered 12941*)**

The Legislature hereby declares its rejection of the court of appeal opinion in Marks v. Loral Corp. (1997) 57 Cal.App.4<sup>th</sup> 30, and states that the opinion does not affect existing law in any way, including, but not limited to, the law pertaining to disparate treatment. The Legislature declares its intent that the use of salary as the basis for differentiating between employees when terminating employment may be found to constitute age discrimination if use of that criterion adversely impacts older workers as a group, and further declares its intent that the disparate impact theory of proof may be used in claims of age discrimination. The Legislature further reaffirms and declares its intent that the courts interpret the state's statutes prohibiting age discrimination in employment broadly and vigorously, in a manner comparable to prohibitions against sex and race discrimination, and with the goal of not only protecting older workers as individuals, but also of protecting older workers as a group, since they face unique obstacles in the later phases of their careers. Nothing in this section shall limit the affirmative defenses traditionally available in employment discrimination cases including, but not limited to, those set forth in Section 7286.7 of Title 2 of the California Code of Regulations.

**§12942. Continuation of employment beyond normal retirement date; effect on pension or retirement plans; compulsory retirement**

(a) Every employer in this state shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue his or her employment beyond any retirement date contained in any private pension or retirement plan.

This employment shall continue so long as the employee demonstrates his or her ability to perform the functions of the job adequately and the employer is satisfied with the quality of work performed.

(b) Any employee indicating this desire and continuing the employment shall give the employer written notice in reasonable time, of intent to retire or terminate when the retirement or termination occurs after the employee's retirement date.

(c) Nothing in this section or Section 12941 shall be construed to prohibit any of the following:

(1) To prohibit an institution of higher education, as defined by Section 1001 of Title 20 of the United States Code, from imposing a retirement policy for tenured faculty members, provided that the institution has a policy permitting reemployment of these individuals on a year-to-year basis.

(2) To prohibit compulsory retirement of any employee who has attained 70 years of age and is a physician employed by a professional medical corporation, the articles or bylaws of which provide for compulsory retirement.

(3) To prohibit compulsory retirement of any employee who has attained 65 years of age and who for the two-year period immediately before retirement was employed in a bona fide executive or a high policymaking position, if that employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer for the employee, which equals in the aggregate at least twenty-seven thousand dollars (\$27,000).

**§12943. School districts; unlawful employment practice based on pregnancy or temporary disability**

It shall be an unlawful employment practice unless based upon a bona fide occupational qualification:

(a) For the governing board of any school district, because of the pregnancy of any female person, to refuse to hire or employ her, or to refuse to select her for a training program leading to employment, or to bar or to discharge her from employment or from a training program leading to employment, or to discriminate against her in compensation or in terms, conditions, or privileges of employment.

(b) For the governing board of any school district to terminate any employee who is temporarily disabled, pursuant to or on the basis of an employment policy under which insufficient or no leave is available, if the policy has a disparate impact on employees of one sex and is not justified by necessity of the public schools.



**§12944. Licensing boards; unlawful acts based on examinations and qualifications; determination of unlawfulness; inquiries; reasonable accommodations; records**

(a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing that has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, physical disability, mental disability, age, or sexual orientation, unless the practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on the examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by the examination or by a license issued in reliance on the examination or qualification.

(b) It shall be unlawful for a licensing board to fail or refuse to make reasonable accommodation to an individual's mental or physical disability or medical condition.

(c) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, sex, age, or sexual orientation or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for. Nothing in this subdivision shall prohibit any licensing board, in connection with prospective examinations, licensure, or certification, from inviting individuals with physical or mental disabilities to request reasonable accommodations or from making inquiries related to reasonable accommodations.

(d) It is unlawful for a licensing board to discriminate against any person because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(e) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date of receipt of the applications.

(f) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency that has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

**§12945. Pregnancy; childbirth or related medical condition; unlawful practice by employers; benefits and leaves of absence; transfer of position**

In addition to the provisions that govern pregnancy, childbirth, or related medical conditions in Sections 12926 and 12940, it shall be an unlawful employment practice, unless based upon a bona fide occupational qualification:

(a) For an employer to refuse to allow a female employee disabled by pregnancy, childbirth, or related medical conditions to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set for in the commission's regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or related medical conditions.

An employer may require an employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(b) (1) For an employer to refuse to provide reasonable accommodation for an employee for conditions related to pregnancy, childbirth, or related medical conditions, if she so requests, with the advice of her health care provider.

(2) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

(3) For an employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. However, no employer shall be required by this section to create additional employment that the employer would not otherwise have created, nor shall such employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(c) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or medical conditions related to pregnancy or childbirth under any other provisions of this part, including subdivision (a) of Section 12940.

## **§12945.1. Moore-Brown-Roberti Family Rights Act**

Sections 12945.2 and 19702.3 shall be known, and may be cited, as the Moore-Brown-Roberti Family Rights Act.

## **§12945.2. Family care and medical leave; definitions; conditions; unlawful employment practices**

(a) Except as provided in subdivision (b), it shall be an unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request.

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed.

(c) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under 18 years of age.

(B) An adult dependent child.

(2) "Employer" means either of the following:

(A) Any person who directly employs 50 or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(3) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.

(B) Leave to care for a parent or a spouse who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(4) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(5) "FMLA" means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(6) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(7) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(8) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the

period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group health plan," as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life, short-term, or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life, short-term, or long-term disability or accident insurance, or other similar plans, the employer may, at his or her discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an

employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(j) (1) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(k) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by his or her health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of his or her position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from his or her health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(I) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to his or her own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(n) The amendments made to this section by the act adding this subdivision shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(o) The provisions of this section shall be construed as separate and distinct from those of Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(A) The employee is a salaried employee who is among the highest paid 10 percent of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed.

(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.

(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave



provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

**§12945.5. Unlawful employment practice; sterilization**

It shall be an unlawful employment practice for an employer to require any employee to be sterilized as a condition of employment.

**§12946. Retention of applications, records and files for two years; failure to retain as unlawful practice by employers, labor organization and employment agencies**

It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken. For the purposes of this section, the State Personnel Board is exempt from the two-year retention requirement and shall instead, maintain the records and files for a period of one year. Upon notice that a verified complaint against it has been filed under this part, any such employer, labor organization, or employment agency shall maintain and preserve any and all records and files until the complaint is fully and finally disposed of and all appeals or related proceedings terminated. The commission shall adopt suitable rules, regulations, and standards to carry out the purposes of this section. Where necessary, the department, pursuant to its powers under Section 12974, may seek temporary or preliminary judicial relief to enforce this section.

**§12947. Child care services for employees and members; not an unlawful practice**

It shall not be an unlawful practice under this part for an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature for its employees or members who are responsible for minor children.

**§12947.5. Prohibition on wearing of pants based on sex; unlawful employment practice; exemptions**

(a) It shall be an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee.

(b) Nothing in this section shall prohibit an employer from requiring employees in a particular occupation to wear a uniform.

(c) Nothing in this section shall prohibit an employer from requiring an employee to wear a costume while that employee is portraying a specific character or dramatic role.

(d) The commission may exempt an employer from the requirements of this section for good cause shown and shall adopt standards and procedures for granting exemptions.

#### **§12948. Denial of civil rights as unlawful practice**

It is an unlawful practice under this part for a person to deny or to aid, incite, or conspire in the denial of the rights created by Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil Code.

#### **§12949. Appearance, grooming and dress standards**

Nothing in this part relating to gender-based discrimination affects the ability of an employer to require an employee to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law, provided that an employer shall allow an employee to appear or dress consistently with the employee's gender identity.

#### **§12950. Sexual harassment; amendment of poster; distribution of information sheet; contents of information sheet; violations**

In addition to employer responsibilities set forth in subdivisions (j) and (k) of Section 12940 and in rules adopted by the department and the commission, every employer shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements:

(a) The department shall amend its current poster on discrimination in employment to include information relating to the illegality of sexual harassment. This amended poster shall be distributed to employers when the supply of the current poster is exhausted. One copy of the amended poster shall be provided by the department to an employer upon request. The amended poster shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the amended poster shall be obtained through the Office of Documents and Publications of the Department of General Services. Each employer shall post the amended poster in a prominent and accessible location in the workplace.

(b) Each employer shall obtain from the department its information sheet on sexual harassment, which the department shall make available to employers for reproduction and distribution to employees. One copy of the information sheet shall be provided by the department to an employer upon request. The information sheets shall be available at each office of the department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. Multiple copies of the information sheet shall be obtained through the Office of Documents and Publications of the Department of General Services. Each employer shall distribute this information sheet to its employees, unless the employer

provides equivalent information to its employees that contains, at a minimum, components on the following:

- (1) The illegality of sexual harassment.
  - (2) The definition of sexual harassment under applicable state and federal law.
  - (3) A description of sexual harassment, utilizing examples.
  - (4) The internal complaint process of the employer available to the employee.
  - (5) The legal remedies and complaint process available through the department and the commission.
  - (6) Directions on how to contact the department and the commission.
  - (7) The protection against retaliation provided by Section 7287.8 of Title 2 of the California Code of Regulations for opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or the commission.
- (c) The information sheet or information required to be distributed to employees pursuant to subdivision (b) shall be delivered in a manner that ensures distribution to each employee, such as including the information sheet or information with an employee's pay.
- (d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the information sheet or information required to be distributed pursuant to this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.
- (e) If an employer violates the requirements of this section, the commission shall issue an order requiring the employer to comply with these requirements.

#### **§12950.1 Sexual harassment; training and education**

(a) By January 1, 2006, an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees who are employed as of July 1, 2005, and to all new supervisory employees within six months of their assumption of a supervisory position. Any employer who has provided this training and education to a supervisory employee after January 1, 2003, is not required to provide training and education by the January 1, 2006 deadline. After January 1, 2006, each employer covered by this section shall provide sexual harassment training and education to each supervisory employee

once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4 of the Government Code using existing resources.

(c) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates the requirements of this section, the commission shall issue an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

#### **§12951. Workplace language policies.**

(a) It is an unlawful employment practice for an employer, as defined in subdivision (d) of Section 12926, to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both of the following conditions exist:

(1) The language restriction is justified by a business necessity.

(2) The employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of the consequences for violating the language restriction.

(b) For the purposes of this section, “business necessity” means an overriding legitimate business purpose such that the language restriction is necessary to the safe and efficient operation of the business, that the language restriction effectively fulfills the business purpose it is supposed to serve, and there is no alternative practice to the language restriction that would accomplish the business purpose equally well within a lesser discriminatory impact.

## **Article 2**

### **HOUSING DISCRIMINATION**

#### **§12955. Unlawful practices**

It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability of any person seeking to purchase, rent or lease any housing accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability or an intention to make that preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, source of income, or on any other basis prohibited by that section.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, marital status, ancestry, disability, source of income, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, source of income, familial status, or disability.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, sexual orientation, marital status, ancestry, disability, familial status, source of income, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, sexual orientation, familial status, source of income, disability, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void. This paragraph shall become operative on January 1, 2001.

(m) As used in this section, "race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p)(1) For the purpose of this section, "source of income" means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant.

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

#### **§12955.1. Discrimination; disabled persons; design and construction of multifamily dwellings; building standards**

(a) For the purposes of Section 12955, "discrimination" includes, but is not limited to, a failure to design and construct a covered multifamily dwelling in a manner that allows access to and use by disabled persons by providing, at a minimum, the following features:

(1) All covered multifamily dwellings shall have at least one building entrance on an accessible route, unless it is impracticable to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticability because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(2) All covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in a manner that complies with all of the following:

(A) The public and common areas are readily accessible to and usable by persons with disabilities.

(B) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons in wheelchairs.

(C) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit.

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall, and shower seat, where those facilities are provided.

(iv) Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

(b)(1) For purposes of Section 12955, "discrimination" includes, but is not limited to, a failure to design and construct 10 percent of the multistory dwelling units in buildings without an elevator that consist of at least four condominium dwelling units or at least three rental apartment dwelling units in a manner that incorporates an accessible route to the primary entry level entrance and that meets the requirements of paragraph (2) of subdivision (a) with respect to the ground floor, at least one bathroom on the primary entry level and the public and common areas. Any fraction thereof shall be rounded up to the next whole number. For purposes of this subdivision, "elevator" does not include an elevator that serves only the first ground floor or any nonresidential area. In multistory dwelling units in these buildings without elevators, the "primary entry level entrance" means the principal entrance through which most people enter the dwelling unit, as designated by the California Building Standards Code or, if not designed by California Building Standards Code, by the building official. To determine the total number of multistory dwelling units subject to this subdivision, all multistory dwelling units in the buildings subject to this subdivision on a site shall be considered collectively. This subdivision shall not be construed to require an elevator within an individual multistory dwelling unit or within a building subject to this subdivision. This subdivision shall apply only to multistory dwelling units in a building subject to this subdivision for which an application for construction permit is submitted on or after July 1, 2005.

(2) Notwithstanding subdivision (c), the Division of the State Architect and the Department of Housing and Community Development may adopt regulations to clarify, interpret, or implement this subdivision, if either of them deem it necessary and appropriate.

(c) Notwithstanding Section 12935, regulations adopting building standards necessary to implement, interpret, or make specific the provisions of this section shall be developed by the Division of the State Architect for public housing and by the Department of Housing and Community Development for all other residential occupancies, and shall be adopted pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of the Health and Safety Code. Prior to the effective date of regulations adopted pursuant to this subdivision, existing federal accessibility standards that provide, to persons with disabilities, greater protections than existing state accessibility regulations shall apply. After regulations pursuant to this subdivision become effective, particular state regulations shall apply if they provide, to persons with disabilities, the same protections as, or greater protections than, the federal standards. If particular federal regulations provide greater protections than state regulations, then those federal standards shall apply. If the United States Department of Housing and Urban Development determines that any portion of the state regulations are not equivalent to the federal standards, the federal standards shall, as



to those portions, apply to the design and construction of covered multifamily dwellings until the state regulations are brought into compliance with the federal standards. The appropriate state agency shall provide notice pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 5 of Division 3 of Title 2) of that determination.

(d) In investigating discrimination complaints, the department shall apply the building standards contained in the California Building Standards Code to determine whether a covered multifamily dwelling is designed and constructed for access to and use by disabled persons in accordance with this section.

(e) The building standard requirements for persons with disabilities imposed by this section shall meet or exceed the requirements under the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and its implementing regulations (24 C.F.R. 100.1 et seq.) and the existing state law building standards contained in the California Building Standards Code.

#### **§12955.1.1 Covered multifamily dwelling and multistory dwelling unit definitions**

For the purposes of Section 12955.1, the following definitions shall apply:

(a) "Covered multifamily dwellings" means both of the following:

(1) Buildings that consist of at least four condominium dwelling units or at least three rental apartment dwelling units if the buildings have at least one elevator. For purposes of this definition, dwelling units within a single structure separated by firewalls do not constitute separate buildings.

(2) The ground floor dwelling units in buildings that consist of at least four condominium dwelling units or at least three rental apartment dwelling units if the buildings do not have an elevator. For purposes of this definition, dwelling units within a single structure separated by firewalls do not constitute separate buildings.

(b) "Multistory dwelling unit" means a condominium dwelling unit or rental apartment with finished living space on one floor and the floor immediately above or below it or, if applicable, the floor immediately above and below it.

#### **§12955.2. Familial status**

For purposes of this part, "familial status" means one or more individuals under 18 years of age who reside with a parent, another person with care and legal custody of that individual, a person who has been given care and custody of that individual by a state or local governmental agency that is responsible for the welfare of children, or the designee of that parent or other person with legal custody of any individual under 18 years of age by written consent of the parent or designated custodian. The protections afforded by this part against discrimination on the basis of familial status also apply to any individual who is

pregnant, who is in the process of securing legal custody of any individual under 18 years of age, or who is in the process of being given care and custody of any individual under 18 years of age by a state or local governmental agency responsible for the welfare of children.

### **§12955.3. Disability**

For purposes of this part, "disability" includes, but is not limited to, any physical or mental disability as defined in Section 12926.

### **§12955.4. Religious organizations; preference to persons of same religion; restrictions**

Nothing in this part shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to those persons, unless membership in that religion is restricted on account of race, color, or national origin.

### **§12955.5. Discriminatory housing practices; collecting information**

Nothing in this part shall preclude the government from establishing programs to collect information relating to discriminatory housing practices.

### **§12955.6. Construction with other laws**

Nothing in this part shall be construed to afford to the classes protected under this part, fewer rights or remedies than the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and its implementing regulations (24 C.F.R. 100.1 et seq.), or state law relating to fair employment and housing as it existed prior to the effective date of this section. Any state law that purports to require or permit any action that would be an unlawful practice under this part shall to that extent be invalid. This part may be construed to afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws.

### **§12955.7. Coercion, intimidation, threats, or interference with rights**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 12955 or 12955.1.

## **§12955.8. Unlawful practices; proof; business establishment**

For purposes of this article, in connection with unlawful practices:

(a) Proof of an intentional violation of this article includes, but is not limited to, an act or failure to act that is otherwise covered by this part, that demonstrates an intent to discriminate in any manner in violation of this part. A person intends to discriminate if race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, or ancestry is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.

(b) Proof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by this part, and that has the effect, regardless of intent, of unlawfully discriminating on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, or ancestry. A business establishment whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the business establishment can establish that the action or inaction is necessary to the operation of the business and effectively carries out the significant business need it is alleged to serve. In cases that do not involve a business establishment, the person whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the person can establish that the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve.

(1) Any determination of a violation pursuant to this subdivision shall consider whether or not there are feasible alternatives that would equally well or better accomplish the purpose advanced with a less discriminatory effect.

(2) For purposes of this subdivision, the term "business establishment" shall have the same meaning as in Section 51 of the Civil Code.

## **§12955.9. Housing for older persons; application**

(a) The provisions of this part relating to discrimination on the basis of familial status shall not apply to housing for older persons.

(b) As used in this section, "housing for older persons" means any of the following:

(1) Housing provided under any state or federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.

(2) Housing that meets the standards for senior housing in Sections 51.2, 51.3, and 51.4 of the Civil Code, except to the extent that those standards violate the prohibition of

familial status discrimination in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations.

(3) Mobilehome parks that meet the standards for "housing for older persons" as defined in the federal Fair Housing Amendments Act of 1988 and implementing regulations.

(c) For purposes of this section, the burden of proof shall be on the owner to prove that the housing qualifies as housing for older persons.

#### **§12956. Retention of records upon notice of complaint**

Upon notice that a verified complaint against it has been filed under this part, any owner of housing accommodations shall maintain and preserve any and all rental records or any other written materials relevant to the complaint, until the complaint is fully and finally disposed of and all appeals or related proceedings terminated.

#### **§12956.1. Racial restrictive covenants and other discriminatory restrictive covenants; notice; removal**

(a) As used in this section, "association," "governing documents," and "declaration" have the same meanings as set forth in Section 1351 of the Civil Code.

(b)(1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

"If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c)(1) Any person who holds an ownership interest of record in property that he or she believes is the subject of a restrictive covenant referred to in subdivision (b), may file an application with the Department of Fair Employment and Housing requesting a determination of whether the restrictive covenant violates the fair housing laws and is void. Any application pursuant to this subdivision shall be in writing, contain a copy of the

document, and identify the location within the document where the restrictive covenant is located.

(2) If the department determines that the document contains a restrictive covenant that violates the law, it shall provide the applicant with a written statement entitled "RACIALLY OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICIATON" that sets forth this determination, including the page and line numbers of any void restrictive covenant, which statement may be recorded with the document pursuant to paragraph (3). The department shall process all applications within 90 days. The department shall include the following language at the end of the written statement which the applicant may complete and sign for purposes of recording pursuant to paragraph (3):

I (We) \_\_\_\_\_ have an ownership interest of record in the property located at \_\_\_\_\_ (Address) that is the subject of this document. The Department of Fair Employment and Housing has determined that this document contains a restrictive covenant that violates the law and is void. Pursuant to Section 12956.1 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive covenant as shown on page(s) \_\_\_\_\_ of the document recorded on \_\_\_\_\_ (Date) in book \_\_\_\_\_ and page \_\_\_\_\_, or instrument number \_\_\_\_\_ of the official records of the County of \_\_\_\_\_. No other changes have been made.

If executed at any place, within or without this state:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
\_\_\_\_\_  
(Date and Place)

(Owner(s) Signature(s))

(3) The applicant may strike out a void restrictive covenant identified by the department, complete and attach a copy of the written statement from the department to the front of the document, and cause the modified document to be recorded, if provided that all other requirements of recordation are met, including the payment of any recordation fee.

(d) Subdivision (c) of this section shall not apply to persons holding an ownership interest in property that is part of a common interest development as defined in subdivision (c) of Section 1351 of the Civil Code, and where the board of directors of that common interest development is subject to the requirement of subdivision (b) of Section 1352.5 of the Civil Code.

(e) The provisions of this section shall have no bearing or effect upon Section 12955.9.

(f) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

(g) (1) Any person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may submit for recordation to the county recorder of the county in which the property is located a modified document striking out the unlawfully restrictive covenant.

(2) The county recorder may record the document, if all other requirements of recordation are met, including the payment of any recording fee, or may direct the person to obtain a determination, pursuant to subdivision (c), that the covenant is unlawful. If the recorder records the document, the recorder shall provide a form entitled "RACIAL OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION," which shall be recorded attached to the front of the document that strikes the unlawfully restrictive covenant.

## **Chapter 7**

### **ENFORCEMENT AND HEARING PROCEDURES**

#### **Article 1**

#### **UNLAWFUL PRACTICES**

##### **§12960. Procedure for prevention and elimination of unlawful employment practices; application of article; complaints; limitations**

(a) The provisions of this article govern the procedure for the prevention and elimination of practices made unlawful pursuant to Article 1 (commencing with Section 12940) of Chapter 6.

(b) Any person claiming to be aggrieved by an alleged unlawful practice may file with the department a verified complaint, in writing, that shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of, and that shall set forth the particulars thereof and contain other information as may be required by the department. The director or his or her authorized representative may in like manner, on his or her own motion, make, sign, and file a complaint.

(c) Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this part may file with the department a verified complaint asking for assistance by conciliation or other remedial action.

(d) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred, except that this period may be extended as follows:

(1) For a period of time not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by an unlawful practice first obtained knowledge of the facts of the alleged unlawful practice after the expiration of one year from the date of their occurrence.

(2) For a period of time not to exceed one year following a rebutted presumption of the identity of the person's employer under Section 12928, in order to allow a person allegedly aggrieved by an unlawful practice to make a substitute identification of the actual employer.

(3) For a period of time, not to exceed one year from the date the person aggrieved by an alleged violation of Section 51.7 of the Civil Code becomes aware of the identity of a person liable for the alleged violation, but in no case exceeding three years from the date of the alleged violation if during that period the aggrieved person is unaware of the identity of any person liable for the alleged violation.

#### **§12961. Class action**

Where an unlawful practice alleged in a verified complaint adversely affects, in a similar manner, a group or class of persons of which the aggrieved person filing the complaint is a member, or where such an unlawful practice raises questions of law or fact which are common to such a group or class, the aggrieved person or the director may file the complaint on behalf and as representative of such a group or class. Any complaint so filed may be investigated as a group or class complaint, and, if in the judgment of the director circumstances warrant, shall be treated as such for purposes of conciliation and accusation. Where an accusation is issued as a group or class accusation, the case shall be treated as a group or class case for all other purposes of this part, including, but not limited to, hearing, determination, reconsideration, and judicial proceedings.

#### **§12962. Service of complaint; time**

(a) The department shall cause any verified complaint filed for investigation under the provisions of this part to be served, either personally or by certified mail with return receipt requested, upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of.

(b) Notwithstanding subdivision (a), where a person claiming to be aggrieved by an alleged unlawful practice hires or retains private counsel for purposes of representation of the claim, the private counsel, and not the department, shall cause the verified complaint

filed under the provisions of this part to be served, either personally or by certified mail with return receipt requested, upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice.

(c) Service shall be made at the time of initial contact with the person, employer, labor organization, or employment agency or the agents thereof, or within 60 days, whichever first occurs. At the discretion of the director, the complaint may not contain the name of the complaining party unless the complaint is filed by the director or his or her authorized representative.

### **§12963. Investigation by department after filing of complaint**

After the filing of any complaint alleging facts sufficient to constitute a violation of any of the provisions of this part, the department shall make prompt investigation in connection therewith.

#### **§12963.1. Subpoenas; issuance; attendance of witnesses; production of books, records, etc.; service**

Upon the filing of a complaint under Section 12960, 12961, or 12980:

(a) The department may issue and serve upon an individual, corporation, partnership, association, public entity, or other organization subpoenas to require the attendance and testimony of witnesses by deposition or otherwise, and in connection therewith, to require the production of books, records, documents, and physical materials in the possession of, or under the control of, the individual or organization named on the subpoena.

(b) A subpoena shall be served by delivering a copy of the subpoena to the individual named on the subpoena or to any person who would be eligible to receive service of summons on behalf of the individual or organization named on the subpoena, as provided in Sections 416.10 through 416.90 of the Code of Civil Procedure. A subpoena issued to a person, employer, labor organization, employment agency, or public entity alleged to have committed an unlawful practice in a complaint filed under Section 12960 or 12961 may also be delivered to the agent or representative who has responded to the department concerning the complaint on behalf of such person, employer, labor organization, employment agency, or public entity. The copy of the subpoena may be delivered by personal service, by substituted service in accordance with Section 415.20 of the Code of Civil Procedure, or by certified mail. The affidavit of the individual serving the subpoena setting forth the manner of such service, along with the return post office receipt in the case of mail service, shall be sufficient proof of such service.

(c) A subpoena for appearance and production of books, records, documents, and physical materials shall identify with reasonable particularity the things that are to be produced. The subpoena need not be accompanied by an affidavit showing good cause or the materiality of the things sought to be produced.



(d) A subpoena for appearance and testimony at a deposition or other proceeding issued to a corporation, partnership, association, public entity, or other organization shall state with reasonable particularity the matters on which testimony is sought. The organization served with such a subpoena shall have the obligation of producing as a witness one or more officers, directors, managing agents, or other individuals to testify on its behalf as to the matters specified in the subpoena.

(e) Service of a subpoena shall be made so as to allow the recipient of the subpoena a reasonable time for compliance. No individual named on a subpoena shall be obliged to attend as a witness before the department at a place out of the county in which that person resides, unless the distance is less than 150 miles from the individual's place of residence or good cause appears why attendance of the witness at greater distance should be required. Each witness who has appeared pursuant to a subpoena shall, upon demand, be paid by the department the same fees and mileage allowed by law to witnesses in civil cases.

**§12963.2. Written interrogatories; issuance and service; written answers; inspection, compilations, abstracts, etc., of records**

Upon the filing of a complaint under Section 12960, 12961, or 12980:

(a) The department may issue and serve written interrogatories on the same individuals and organizations and in the same manner as subpoenas may be issued and served under Section 12963.1. Any corporation, partnership, association, public entity, or other organization to which interrogatories are issued has the obligation of designating one or more officers, directors, managing agents, or other individuals to answer the interrogatories on the organization's behalf.

(b) Within 30 days after the service of the interrogatories, or such longer time as the department may permit, the recipient of the interrogatories shall serve on the department written answers either responding fully or stating any objection to each interrogatory separately. The answers shall be made under oath and shall be signed by each individual making them, and the answers shall identify which individual has responded to each interrogatory.

(c) When in order to answer an interrogatory it is necessary to make a compilation, abstract, audit, or summary of the business records of the recipient of the interrogatory and such a compilation, abstract, audit, or summary does not exist or is not in the possession or under the control of the recipient, it shall be a sufficient answer to the interrogatory to so state and to specify the records from which the answer may be derived or ascertained and to afford the department reasonable opportunity to inspect and copy or make compilations, abstracts, or summaries from such records.

**§12963.3. Deposition; issuance and service of subpoena; notice; procedure for taking**

(a) Depositions taken by the department shall be noticed by issuance and service of a subpoena pursuant to Section 12963.1. If, in the course of the investigation of a complaint, a subpoena is issued and served on an individual or organization not alleged in the complaint to have committed an unlawful practice, written notice of the deposition shall also be mailed by the department to each individual or organization alleged in the complaint to have committed an unlawful practice.

(b) A deposition may be taken before any officer of the department who has been authorized by the director to administer oaths and take testimony, or before any other person before whom a deposition may be taken in a civil action pursuant to Section 2025 of the Code of Civil Procedure. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination shall be noted on the deposition by the person before whom the deposition is taken, and evidence objected to shall be taken subject to the objections.

**§12963.4. Requests for production of books, records, documents, etc.; issuance and service; identification; written response**

(a) The department may issue and serve requests for production for inspection and copying of books, records, documents, and physical materials in the possession or under the control of an individual or organization. A request for production may be issued and served on the same individuals and organizations and in the same manner as subpoenas may be issued and served under Section 12963.1.

(b) A request for production shall identify with reasonable particularity the things that are to be inspected and shall specify a reasonable time, place, and manner of making the inspection and performing the copying, and may prescribe such terms and conditions as are just.

(c) Within 15 days after service of a request for production or such longer time as the department may permit, the recipient of the request shall serve on the department a written response with respect to each item requested, either stating that inspection and copying will be permitted as requested or objecting to the request and stating the grounds of the objection. Unless a request for production is objected to, the recipient of the request shall thereafter permit the inspection and copying requested by the department.

**§12963.5. Jurisdiction; petition to compel compliance; contents; order; review; mandamus; contempt**

(a) The superior courts shall have jurisdiction to compel the attendance and testimony of witnesses, the production of books, records, documents, and physical materials, and the

answering of interrogatories. If an individual or organization fails to comply with a subpoena, interrogatory, request for production, or examination under oath by refusing to respond fully or objecting thereto, or by obstructing any proceeding before the department, the department may file with a superior court a petition for an order compelling compliance, naming as respondent the individual or organization that has failed to comply. Such an action may be brought in any county in which the department's investigation or inquiry takes place, but if the respondent is not found within any such county, such an action may be brought in the county of the respondent's residence or principal office.

(b) The petition shall describe the inquiry or investigation before the department, the basis for its jurisdiction therein, and state facts showing that the subpoena, interrogatory, request for production, or examination under oath was issued or carried out in accordance with the requirements of this part, that the information sought was identified with sufficient particularity to permit response and is reasonably relevant to the inquiry or investigation before the department, and that the respondent has failed to comply. If the petition sets forth good cause for relief, the court shall issue an order to show cause to the respondent; otherwise the court shall enter an order denying the petition. The order to show cause shall be served, along with the department's petition, on the respondent in the same manner as summons must be served in civil actions, and the order shall be returnable not less than 10 days from its issuance nor later than 45 days after the filing of the petition. The respondent shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(c) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order granting or denying the petition. However, the court may on its own motion for good cause extend such time an additional 30 days. If the order grants the petition in whole or part, the order shall set forth the manner in which the respondent shall comply and the period of time following the effective date of the order within which such compliance is required. A copy of the order shall be served by mail by the clerk upon the parties. If the order grants the petition in whole or in part, the order shall not become effective until 10 days after it is served. If the order denies the petition, it shall become effective on the date it is served.

(d) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the superior court's order, serve and file in the appropriate court of appeal a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. If or whenever such review is sought from an order granting discovery, the order of the trial court shall be stayed upon the filing of the petition for a writ of mandamus, provided, however, the court of appeal may dissolve or modify the stay thereafter if it is in the public interest to do so. If or whenever such review is sought from a denial of discovery, the trial court's order shall not be stayed by the court of appeal except upon a clear showing of probable error.

(e) Within 15 days after the end of the compliance period specified in the final order of the superior court, after the exhaustion of any challenges to the order in higher courts, the

department shall in writing certify to the court either that the order has been complied with or that the respondent has failed to comply. A copy of the certified statement shall be served on the respondent by personal delivery or certified mail. After receipt of a certified statement indicating the respondent's failure to comply with the order, the court may compel obedience to its order by contempt proceedings, and by making such additional orders as may be appropriate. Following such proceedings, the department shall, within 15 days after the respondent complies with the original order of the court, certify in writing to the court that such order has been complied with. A copy of the certified statement shall be served on the respondent by personal delivery or certified mail.

(f) The period of time within which the department is directed to file an accusation by Section 12965 shall be extended by the length of the period between the filing of a petition under this section and either (1) the final effective date, after the exhaustion of any challenges to the original order in higher courts, of an order of the superior court denying the petition, or (2) the filing by the department of a certified statement, pursuant to subdivision (e), indicating the respondent's compliance with the order of the superior court granting the petition in whole or in part, whichever occurs later.

**§12963.7. Elimination of unlawful employment practice by conference, conciliation and persuasion; confidentiality; disclosure as misdemeanor**

(a) If the department determines after investigation that the complaint is valid, the department shall immediately endeavor to eliminate the unlawful employment practice complained of by conference, conciliation, and persuasion. The staff of the department shall not disclose what has transpired in the course of any endeavors to eliminate the unlawful employment practice through conference, conciliation, and persuasion.

(b) Any member of the staff of the department who discloses information in violation of the requirements of this section is guilty of a misdemeanor. Such disclosure by an employee subject to civil service shall be cause for disciplinary action under the State Civil Service Act.

**§12964. Agreement based on conference, conciliation and persuasion; reduction to writing; compliance review; injunction; civil action**

Any agreement entered into by conference, conciliation and persuasion shall be reduced to writing, signed by all parties, and approved by the director or the authorized representative of the director. Within one year of the effective date of every agreement, the department shall conduct a compliance review to determine whether the agreement has been fully obeyed and implemented. Whenever the department believes, on the basis of evidence presented to it, that any person is violating or about to violate any agreement, the department may bring an action in the superior court against the person to enjoin him or her from continuing or engaging in the violation, or from doing anything in furtherance of the violation. In the action an order or judgment may be entered awarding a temporary restraining order or a preliminary or final injunction as may be proper. The action may be

brought in any county in which actions may be brought under subdivision (b), of Section 12965. In resolving allegedly unlawful practices through conciliation the resolutions may be in the nature of, but are not limited to, types of remedies that might be ordered after accusation and hearing.

**§12965. Written accusation by department; group or class complaint; civil action; transfer to court; relief; damages**

(a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization, or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing. For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior or municipal courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in any of these courts. Such an action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which

the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity.

(c) (1) If an accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, the respondent may within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, the commission, and the person claiming to be aggrieved. The commission shall prescribe the form and manner of giving written notice.

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the appropriate superior court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

(3) A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures.

(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.

(d) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(C) A right-to-sue notice is issued to the person claiming to be aggrieved upon deferral of the charge by the Department of Fair Employment and Housing to the Equal Employment Opportunity Commission.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

(3) This subdivision is intended to codify the holdings in *Downs v. Department of Water and Power of City of Los Angeles* (1977) 58 Cal.App.4<sup>th</sup> 1093.

(e) (1) Notwithstanding subdivision (b), the one-year statute of limitations, commencing from the date of the right-to-sue notice by the Department of Fair Employment and Housing, to the person claiming to be aggrieved, shall be tolled when all of the following requirements have been met:

(A) A charge of discrimination or harassment is timely filed concurrently with the Equal Employment Opportunity Commission and the Department of Fair Employment and Housing.

(B) The investigation of the charge is deferred by the Equal Employment Opportunity Commission to the Department of Fair Employment and Housing.

(C) After investigation and determination by the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission agrees to perform a substantial weight review of the determination of the department or conducts its own investigation of the claim filed by the aggrieved person.

(2) The time for commencing an action for which the statute of limitations is tolled under paragraph (1) shall expire when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing, whichever is later.

**§12966. Accused as state contractor or supplier of goods and services to state; notice to and report by awarding agency**

Where the department issues an accusation, or is about to do so, and the respondent accused of engaging in unlawful practices under this part is a state contractor or is a supplier of goods and services to the state, the director shall send a written notice of the issuance of the accusation and a copy of the accusation to the appropriate awarding agency and request a report of any action which the awarding agency takes in response to the department's notification and issuance of accusation.

**§12967. Hearings; determination of issues**

The commission shall hold hearings on accusations issued pursuant to Section 12965 and shall determine the issues raised therein.

**§12968. Hearings; time**

Hearings shall take place not more than 90 days after the issuance of the accusation upon which they are based.

**§12969. Presentation by department of case in support of accusation; participation by members of commission**

The case in support of the accusation shall be presented before the commission by the attorneys or agents of the department. Any commissioner who, in regard to a particular case, shall have previously been assigned to engage in investigation or conciliation endeavors or shall otherwise have been or be personally or professionally connected with the parties or factual situation of the original complaint upon which the accusation is based, shall not participate in the hearing except as a witness and shall not have his or her opinion of the merits of the case, nor shall he or she participate in the deliberations of the commission in such case. In connection with complaints initiated by the director, the personal or professional association of the commissioners with the director shall not prohibit the commissioners from participating in the deliberations of such cases. In any hearing, the content of discussions or endeavors at conciliation shall not be received in evidence.

**§12970. Findings; order; remedies; administrative fine; civil penalty; report to agency; dismissal; appeal rights; copy to district attorney**



(a) If the commission finds that a respondent has engaged in any unlawful practice under this part, it shall state its findings of fact and determination and shall issue and cause to be served on the parties an order requiring the respondent to cease and desist from the unlawful practice and to take action, including, but not limited to, any of the following:

(1) The hiring, reinstatement, or upgrading of employees, with or without backpay.

(2) The admission or restoration to membership in any respondent labor organization.

(3) The payment of actual damages as may be available in civil actions under this part, except as otherwise provided in this section. Actual damages include, but are not limited to, damages for emotional injuries if the accusation or amended accusation prays for those damages. Actual damages awarded under this section for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses shall not exceed, in combination with the amounts of any administrative fines imposed pursuant to subdivision (c), one hundred fifty thousand dollars (\$150,000) per aggrieved person per respondent.

(4) Notwithstanding paragraph (3), the payment of actual damages up to one hundred fifty thousand dollars (\$150,000) assessed against a respondent for a violation of Section 51.7 of the Civil Code, as an unlawful practice under this part.

(5) Affirmative or prospective relief to prevent the recurrence of the unlawful practice.

(6) A report to the commission as to the manner of compliance with the commission's order.

(b) An unlawful practice under this part alone is not sufficient to sustain an award of actual damages pursuant to this section. The department is required to prove, by a preponderance of the evidence, that an aggrieved person has sustained actual injury. In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the commission shall consider relevant evidence of the effects of discrimination on the aggrieved person with respect to any or all of the following:

(1) Physical and mental well-being.

(2) Personal integrity, dignity, and privacy.

(3) Ability to work, earn a living, and advance in his or her career.

(4) Personal and professional reputation.

(5) Family relationships.

(6) Access to the job and ability to associate with peers and coworkers.

The commission shall also consider the duration of the emotional injury, and whether that injury was caused or exacerbated by an aggrieved person's knowledge of a respondent's failure to respond adequately to, or to correct, the discriminatory practice or by the egregiousness of the discriminatory practice.

(c) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the commission may assess against the respondent, if the accusation or amended accusation so prays, an administrative fine per aggrieved person per respondent, the amount of which shall be determined in accordance with the combined amount limitation of paragraph (3) of subdivision (a).

(d) In determining whether to assess an administrative fine pursuant to this section, the commission shall find that the respondent has been guilty of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of fines, the commission shall consider relevant evidence of, including, but not limited to, the following:

- (1) Willful, intentional, or purposeful conduct.
- (2) Refusal to prevent or eliminate discrimination.
- (3) Conscious disregard for the rights of employees.
- (4) Commission of unlawful conduct.
- (5) Intimidation or harassment.
- (6) Conduct without just cause or excuse.
- (7) Multiple violations of the Fair Employment and Housing Act.

The moneys derived from an administrative fine assessed pursuant to this subdivision shall be deposited in the General Fund. No administrative fine shall be assessed against a public entity. The commission shall have no authority to award punitive damages as a remedy for a finding of employment discrimination.

(e) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the commission may assess against the respondent if the accusation or amended accusation so prays, a civil penalty of up to twenty-five thousand dollars (\$25,000) to be awarded to a person denied any right provided for by Section 51.7 of the Civil Code, as an unlawful practice prohibited under this part.

(f) If the commission finds the respondent has engaged in an unlawful practice under this part, and the respondent is licensed or granted a privilege by an agency of the state to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, the

commission shall provide the licensing or privilege granting agency with a copy of its decision or order.

(g) If the commission finds that a respondent has not engaged in an unlawful practice under this part, the commission shall state its findings of fact and determination and issue and cause to be served on the parties an order dismissing the accusation as to that respondent.

(h) Any findings and determination made or any order issued pursuant to this section shall be written and shall indicate the identity of the members of the commission who participated therein.

(i) Any order issued by the commission shall have printed on its face references to the rights of appeal of any party to the proceeding to whose position the order is adverse.

(j) If the commission finds that a respondent has engaged in an unlawful practice under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the commission, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(k) Notwithstanding Section 12960, if the commission finds that a respondent has engaged in unlawful discrimination in housing under Section 12948, the remedies afforded in Section 12987 or any other provision in this part pertaining to housing discrimination, shall apply.

#### **§12971. Withdrawal of complaint, dismissal by department or termination or closure of investigation; notice to respondent and complainant**

If, at any time during the proceedings described in this part, after a complaint has been served on a respondent, the complaint is withdrawn by the complainant or dismissed by the department, or an investigation is terminated or closed by the department, notice of this fact shall be given to the respondent and the complainant without undue delay.

#### **§12972. Actions and procedures; law governing**

(a) The commission shall conduct all actions and procedures in accordance with its procedural regulations.

(b)(1) If the commission does not have a procedural regulation on a particular issue, the commission shall rely upon pertinent provisions of the Administrative Procedure Act (Chapter 4 (commencing with Section 11370)).

(2) Notwithstanding paragraph (1), the Administrative Adjudication Bill of Rights set forth in Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1, and the rules for judicial review set forth in Section 11523, shall apply to the commission.

(c) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure. *(Effective July 1, 2005, pursuant to AB 3081, Chapter 182, Statutes of 2004, this section will read: (c) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.*

### **§12973. Compliance review of final order or decision; time; judgment and order of enforcement**

(a) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

(b) If the time for judicial review of a final commission order or decision has lapsed, or if all means of judicial review have been exhausted, the department may apply to the superior court in any county in which an action could have been brought under subdivision (b) of Section 12965 for the enforcement of the order or decision or order as modified in accordance with a decision on judicial review. If, after a hearing, the court determines that an order or decision has been issued by the commission and that either the time limits for judicial review have lapsed, or the order or decision was upheld in whole or in part on judicial review, the court shall issue a judgment and order enforcing the order or decision or order as modified in accordance with a decision on judicial review. The court shall not review the merits of the order or decision. The court's judgment shall be nonappealable and shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action.

(c) Notwithstanding subdivisions (a) and (b), where the reviewing court denies a petition for writ of mandate seeking review of a commission order or decision, the court shall enter judgment denying the petition and enforcing the commission's final order or decision.

(d) If the commission has found that a respondent has engaged in an unlawful practice under this part and is liable for actual damages, an administrative fine, or a civil penalty, any amount due to that respondent by a state agency may be offset to satisfy the commission's final order or decision.

(e) Notwithstanding any other provision of law, the commission is not liable for attorney's fees of parties to the administrative adjudication of cases brought before the commission, including proceedings brought pursuant to Section 11523 of this code and Section 1094.5 of the Code of Civil Procedure.

**§12974. Civil action for relief pending final disposition of complaint; temporary or preliminary relief; venue**

Whenever a complaint is filed with the department and the department concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this part, the director or his authorized representative may bring a civil action for appropriate temporary or preliminary relief pending final disposition of such complaint. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with Section 527 of the Code of Civil Procedure. An action seeking such temporary or preliminary relief may be brought in any county in which actions may be brought under subdivision (b) of Section 12965.

**§12975. Willful interference with duties of department or commission or willful violation of orders of commission relating to employment; misdemeanor; punishment**

Any person who shall willfully resist, prevent, impede or interfere with any member of the department or the commission or any of its agents or employees in the performance of duties pursuant to the provisions of this part relating to employment discrimination, or who shall in any manner willfully violate an order of the commission relating to such matter, is guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or both.

**§12976. Willful violation of record keeping requirements; misdemeanor; punishment**

Any person who willfully violates Section 12946 concerning recordkeeping is guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or both.

## Article 2

### HOUSING DISCRIMINATION

#### **§12980. Procedure for prevention and elimination of discrimination in housing; application of article; complaint; other remedies; time; civil action**

This article governs the procedure for the prevention and elimination of discrimination in housing made unlawful pursuant to Article 2 (commencing with Section 12955) of Chapter 6.

(a) Any person claiming to be aggrieved by an alleged violation of Section 12955, 12955.1, or 12955.7 may file with the department a verified complaint in writing that shall state the name and address of the person alleged to have committed the violation complained of, and that shall set forth the particulars of the alleged violation and contain any other information required by the department.

The filing of a complaint and pursuit of conciliation or remedy under this part shall not prejudice the complainant's right to pursue effective judicial relief under other applicable laws, but if a civil action has been filed under Section 52 of the Civil Code, the department shall terminate proceedings upon notification of the entry of final judgment unless the judgment is a dismissal entered at the complainant's request.

(b) The Attorney General or the director may, in a like manner, make, sign, and file complaints citing practices that appear to violate the purpose of this part or any specific provisions of this part relating to housing discrimination.

No complaint may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated.

(c) The department may thereupon proceed upon the complaint in the same manner and with the same powers as provided in this part in the case of an unlawful practice, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than the provisions of Article 1 (commencing with Section 12960), the provisions of this article shall prevail.

(d) Upon the filing of a complaint, the department shall serve notice upon the complainant of the time limits, rights of the parties, and choice of forums provided for under the law.

(e) The department shall commence proceedings with respect to a complaint within 30 days of filing of the complaint.

(f) An investigation of allegations contained in any complaint filed with the department shall be completed within 100 days after receipt of the complaint, unless it is impracticable

to do so. If the investigation is not completed within 100 days, the complainant and respondent shall be notified, in writing, of the department's reasons for not doing so.

(g) Upon the conclusion of each investigation, the department shall prepare a final investigative report containing all of the following:

- (1) the names of any witnesses and the dates of any contacts with those witnesses.
- (2) A summary of the dates of any correspondence or other contacts with the aggrieved person or the respondent.
- (3) A summary of witness statements.
- (4) Answers to interrogatories.
- (5) A summary description of other pertinent records.

A final investigative report may be amended if additional evidence is later discovered.

(h) If an accusation is not issued within 100 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify the person claiming to be aggrieved. This notice shall, in any event, be issued no more than 30 days after the date of the determination or 30 days after the date of the expiration of the 100-day period, whichever date first occurs. The notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person named in the verified complaint within the time period specified in Section 12989.1. The notice shall also indicate, unless the department has determined that no accusation will be issued, that the person claiming to be aggrieved has the option of continuing to seek redress for the alleged discrimination through the procedures of the department if he or she does not desire to file a civil action. The superior and municipal courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in any of these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees.

(i) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be made public, unless otherwise agreed by the complainant and respondent, and the department determines that the disclosure is not required to further the purposes of the act.

(j) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be agreements between the respondent and complainant, and shall be subject to approval by the department.

**§12981. Departmental accusation upon failure of conference, conciliation or persuasion; application; housing discrimination action; hearings; compliance review; civil action; judgment and order; emotional distress or other intangible distress**

(a) In the case of failure to eliminate a violation of Section 12955, 12955.1, or 12955.7 that has occurred, or is about to occur, through conference, conciliation, and persuasion, or in advance thereof if circumstances warrant, the director shall cause to be issued in the name of the department, notwithstanding Section 12971, a written accusation, in the same manner and with the same powers as provided in Section 12965, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than Section 12965, the provisions of this article shall prevail. An accusation alleging an unfair housing practice shall be issued within 100 days after the filing of a complaint unless it is impracticable to do so. The accusation shall require the respondent to answer the charges at an administrative hearing or civil trial as elected by the parties pursuant to Section 12989. Any aggrieved person may intervene as a matter of right in the proceeding, and the appeal or other judicial review of that proceeding.

(b) If the department determines that an allegation concerns the legality of any zoning or other land use law or ordinance, the department or the Attorney General shall take appropriate action with respect to the complaint according to the procedures established in this part for other complaints of housing discrimination.

(c) The commission shall hold hearings on accusations issued pursuant to subdivision (a) in the same manner and with the same powers as provided in Sections 12967 to 12972, inclusive, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than do Sections 12967 to 12972, inclusive, the provisions of this article shall prevail. The commission shall make final administrative disposition of a complaint alleging unfair housing practices within one year of the date of filing of the complaint, unless it is impracticable to do so. If the department is unable to make final administrative disposition of a complaint within one year, it shall notify the complainant and the respondent, in writing, of its reasons for not doing so.

(d) Within one year of the effective date of every final order or decision issued pursuant to this part, the department shall conduct a compliance review to determine whether the order or decision has been fully obeyed and implemented.

(e) Whenever the department has reasonable cause to believe that a respondent has breached a conciliation agreement, the department shall refer the matter to the Attorney General with a recommendation that a civil action be filed for the enforcement of the agreement.



(f) If the time for judicial review of a final commission order or decision has lapsed, or if all means of judicial review have been exhausted, the department may apply to the superior court in any county in which an action could have been brought under subdivision (b) of Section 12965 for the enforcement of the order or decision or order as modified in accordance with a decision on judicial review. If, after a hearing, the court determines that an order or decision has been issued by the commission and that either the time limits for judicial review have lapsed, or the order or decision was upheld in whole or in part on judicial review, the court shall issue a judgment and order enforcing the order or decision or order as modified in accordance with a decision on judicial review. The court shall not review the merits of the order or decision. The court's judgment shall be nonappealable and shall have the same force and effect as, and shall be subject to all the provisions of law relating to, a judgment in a civil action.

#### **§12981.1 Dismissal of complaint or accusation**

The department shall not dismiss a complaint or an accusation unless the complainant withdraws the complaint or the department determines after a thorough investigation that, based on the facts, no reasonable cause exists to believe that an unlawful housing practice, as prohibited by this part, has occurred or is about to occur.

#### **§12983. Action by department for temporary relief; probable cause of violation of part; order or judgment; law governing**

The department, or at its election the Attorney General, at any time after a complaint is filed with it and it has been determined that probable cause exists for believing that the allegations of the complaint are true and constitute a violation of this part, may bring an action in the superior court to enjoin the owner of the property from taking further action with respect to the rental, lease, or sale of the property, as well as to require compliance with Section 12956, until the department has completed its investigation and made its determination; but a temporary restraining order obtained under this section shall not, in any event, be in effect for more than 20 days. In this action an order or judgment may be entered awarding the temporary restraining order or the preliminary or final injunction in accordance with Section 527 of the Code of Civil Procedure.

#### **§12984. Privilege of conference, conciliation or persuasion efforts; disclosure; misdemeanor; discipline**

Except as provided in Section 12980, all matters connected with any conference, conciliation, or persuasion efforts under this part are privileged and may not be received in evidence. Except as provided in Section 12980, the members of the department and its staff shall not disclose to any person what has transpired in the course of such endeavors to conciliate. Every member of the department or its staff who discloses information in violation of this section is guilty of a misdemeanor. Such disclosure by an employee

subject to civil service shall be cause for disciplinary action under the State Civil Service Act.

**§12985. Contacts by department following filing of complaint; disclosure of nature of contact; privilege**

When a person is contacted by the department, a commissioner, or a member of the department's staff, following the filing of a complaint against that person, the person shall be informed whether the contact is for the purpose of investigation or conference, conciliation, or persuasion; and if it is for conference, conciliation, or persuasion, the person shall be informed that all matters relating thereto are privileged.

**§12986. Service of complaint on respondent**

The department shall within 10 days cause a copy of the verified complaint that has been filed under the provisions of this part to be served upon or mailed to the respondent alleged to have committed the violation complained of and shall advise the respondent in writing of his or her procedural rights and obligations. The respondent may file an answer to the complaint.

**§12987. Findings by commission; order to cease and desist; other remedies; damages; waiver; dismissal of accusation**

(a) If the commission, after hearing, finds that a respondent has engaged in any unlawful practice as defined in this part, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the practice and to take those actions, as, in the judgment of the commission, will effectuate the purpose of this part, including, but not limited to, any of the following:

(1) The sale or rental of the housing accommodation if it is still available, or the sale or rental of a like housing accommodation, if one is available, or the provision of financial assistance, terms, conditions, or privileges previously denied in violation of subdivision (f) of Section 12955 in the purchase, organization, or construction of the housing accommodation, if available.

(2) Affirmative or prospective relief, including injunctive or other equitable relief.

(3) The payment to the complainant of a civil penalty against any named respondent, not to exceed ten thousand dollars (\$10,000) unless, in a separate accusation, the respondent has been adjudged to have, with intent, committed a prior violation of Section 12955. If the respondent has, in a separate accusation, been adjudged to have committed a prior violation of Section 12955 within the five years preceding the filing of the complaint, the amount of the civil penalty may exceed ten thousand dollars (\$10,000), but may not exceed twenty-five thousand dollars (\$25,000). If the respondent, in separate accusations,

has been adjudged to have, with intent, violated Section 12955 two or more times within the seven-year period preceding the filing of the complaint, the civil penalty may exceed twenty-five thousand dollars (\$25,000), but may not exceed fifty thousand dollars (\$50,000).

All civil penalties awarded under this provision shall be collected by the department. The commission may award the prevailing party, other than the state, reasonable attorney's fees and costs against any party other than the state, including expert witness fees.

(4) The payment of actual damages to the complainant.

(b) In determining whether to assess a civil penalty pursuant to this section, the commission shall find that the respondent has been guilty of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of a civil penalty, the commission shall consider Section 12955.6 and relevant evidence of, including, but not limited to, the following:

- (1) Willful, intentional, or purposeful conduct.
- (2) Refusal to prevent or eliminate discrimination.
- (3) Conscious disregard for fair housing rights.
- (4) Commission of unlawful conduct.
- (5) Intimidation or harassment.
- (6) Conduct without just cause or excuse.
- (7) Multiple violations of the Fair Employment and Housing Act.

(c) If the commission finds that the respondent has engaged in an unlawful practice under this part, and the respondent is licensed or granted a privilege by an agency of the state or the federal government to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, the commission shall provide the licensing or privilege granting agency with a copy of its decision or order.

(d) If the commission finds that the respondent has engaged in an unlawful practice under this part and is liable for actual damages or a civil penalty, any amount due to the respondent by a state agency may be offset to satisfy the commission's final order or decision.

(e) No remedy shall be available to the aggrieved person unless the aggrieved person waives any and all rights or claims under Section 52 of the Civil Code prior to receiving a remedy, and signs a written waiver to that effect.

(f) The commission may require a report of the manner of compliance.

(g) If the commission finds that a respondent has not engaged in any practice which constitutes a violation of this part, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the accusation as to that respondent.

(h) Any order issued by the commission shall have printed on its face references to the provisions of the Administrative Procedure Act which prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse.

#### **§12987.1. Review of final order of relief; intervention as matter of right; enforcement decree**

(a) Any party aggrieved by the commission's final order for relief may obtain a review of that order in accordance with the provisions of Section 11523 of this code and Section 1094.5 of the Code of Civil Procedure except that the limitations on the court's remedial powers as described in subdivision (f) of Section 1094.5 of the Code of Civil Procedure shall not apply.

(b) The superior court, in reviewing the commission's final order, may award the following relief:

(1) Grant to the petitioner, or any other party, temporary relief, including, but not limited to, a restraining order, or other order as the court deems just and proper.

(2) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings, and enforce the order to the extent that it is affirmed or modified.

(c) Any party to the proceeding before the commission or aggrieved person may intervene as a matter of right in the superior court proceeding.

(d) When the time for petitioning a court for review of the commission's order has expired, the department or any party to the commission proceeding may petition a court for a decree enforcing the commission's order. The court may grant any relief necessary to ensure compliance with the commission's order.

(e) Notwithstanding subdivisions (a) to (d), inclusive, where the reviewing court denies a petition for writ of mandate seeking review of a commission order or decision, the court shall enter judgment denying the petition and enforcing the commission's order or decision.

#### **§12988. Affirmative actions**

The commission and the department may engage in affirmative actions with owners in furtherance of the purpose of this part as expressed in Section 12920.

## **§12989. Civil action in lieu of administrative proceeding**

(a) If an accusation is issued under Section 12981, a complainant, a respondent, or an aggrieved person on whose behalf a complaint is filed may elect, in lieu of an administrative proceeding under Section 12981, to have the claims asserted in the charge adjudicated in a civil action under this part.

(b) An election under this section may be made within 20 days after the service of the accusation, and not later than 20 days after service of the complaint to the respondent. A notice of election shall be filed with the department, and the department shall serve a copy of the notice to the director, the respondent, and the aggrieved person on whose behalf the complaint is filed. The notice shall be filed and served on all parties to the complaint in accordance with the procedures established by Section 12962.

(c) If either party serves a notice of election upon the department, as prescribed, the department shall, within 30 days after service of the notice of the election, dismiss the accusation. The department shall itself, or at its election through the Attorney General, within 30 days of receipt of the notice of election, file a civil action with the proper superior court in its name or on behalf of the aggrieved person as a real party in interest. In bringing a civil or administrative action, or pursuing subsequent appeals of those actions, the department or the Attorney General shall, in its representation of an aggrieved person's interests, comply with the Rules of Professional Conduct of the State Bar of California. The action may be filed in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to that practice are maintained and administered, or in the county in which the aggrieved person would have resided in the housing accommodation. If the respondent is not found within that county, the action may be filed in the county of the respondent's residence or principal office.

(d) Any person aggrieved with respect to the issues to be determined in a civil action filed under this part may intervene as of right in that civil action.

(e) If an election is not made pursuant to this section, the director shall maintain an administrative proceeding based on the charges in the complaint in accordance with the procedures set forth in Section 12981.

(f) The director or his or her designated representative shall be available for consultation concerning any legal issues raised by the Attorney General that relate to evidentiary or tactical matters relevant to any civil action brought under this part.

### **§12989.1. Commencement of civil actions; statute of limitations; procedure**

An aggrieved person may commence a civil action in an appropriate court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach. The computation of the two-year period shall not include any time during which an

administrative proceeding under this part was pending with respect to a complaint or accusation under this part based upon the discriminatory housing practice or breach.

An aggrieved person may commence a civil action whether or not a complaint has been filed under this part and without regard to the status of any complaint. Any aggrieved person who is aggrieved with respect to the issues to be determined in a civil action filed under this part, may intervene in that civil action. However, if the department has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this part by the aggrieved person with respect to the alleged discriminatory housing practice that forms the basis for the complaint, except for the purpose of enforcing the terms of the agreement.

An aggrieved person may not commence a civil action with respect to an alleged discriminatory housing practice that forms the basis of an accusation issued by the department if the department has commenced a hearing on the accusation.

### **§12989.2. Relief; damages; fees and costs**

(a) In a civil action brought under Section 12989 or 12989.1, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award the plaintiff or complainant actual and punitive damages and may grant other relief, including the issuance of a temporary or permanent injunction, or temporary restraining order, or other order, as it deems appropriate to prevent any defendant from engaging in or continuing to engage in an unlawful practice. The court may, at its discretion, award the prevailing party, other than the state, reasonable attorney fees and costs, including expert witness fees, against any party other than the state.

(b) Notwithstanding any other provision of law, the commission is not liable for the attorney's fees of parties to the administrative adjudication of cases brought before the commission, including proceedings under Sections 11523 and 12987.1 of this code and Section 1094.5 of the Code of Civil Procedure.

### **§12989.3. Civil actions commenced by Attorney General**

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of denying to others the full enjoyment of any of the rights granted by this article, or that any group of persons has been denied any of the rights granted by this article and that denial raises an issue of general public importance, the Attorney General shall commence a civil action in any court.

(b) Upon referral from the department, the Attorney General may commence a civil action in any appropriate court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the department under subdivision (b) of Section 12981.

(c) A civil action under this section may be commenced not later than the expiration of 18 months after the date of the occurrence or termination of the alleged discriminatory housing practice.

(d) The Attorney General shall commence a civil action in any appropriate court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the department. A civil action shall be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach.

(e) The Attorney General, on behalf of the department or other party at whose request a subpoena is issued, under this article, shall enforce that subpoena in appropriate proceedings in the court for the judicial district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(f) In a civil action under this section, the court may award any of the following:

(1) Preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title.

(2) Other relief as the court deems appropriate, including monetary damages to persons aggrieved.

(3) A civil penalty in an amount not exceeding fifty thousand dollars (\$50,000), for a first violation, and in an amount not exceeding one hundred thousand dollars (\$100,000), for any subsequent violation.

(g) In a civil action under this section, the court, in its discretion, may allow the prevailing party, reasonable attorney's fees and costs, including expert witness fees, against any party other than the state.

(h) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under this section that involves an alleged discriminatory housing practice with respect to which that person is an aggrieved person or a conciliation agreement to which that person is a party. The court may grant appropriate relief to any intervening party as is authorized to be granted to a plaintiff in a civil action under Section 12989.2.

## Chapter 8

### NONDISCRIMINATION AND COMPLIANCE EMPLOYMENT PROGRAMS

#### **§12990. Contractors and subcontractors for state public works, goods and services; nondiscrimination program and clauses; rules and regulations; federal programs as state compliance; sanctions to awarding agency**

(a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations which implement it.

(b) Prior to becoming a contractor or subcontractor with the state, an employer may be required to submit a nondiscrimination program to the department for approval and certification and may be required to submit periodic reports of its compliance with such a program.

(c) Every state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations under that clause to labor organizations with which they have a collective bargaining or other agreement. Such contractual provisions shall be fully and effectively enforced.

(d) The department shall periodically develop rules and regulations for the application and implementation of this section, and submit them to the commission for consideration and adoption in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1. Those rules and regulations shall describe and include, but not be limited to, all of the following:

(1) Procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination programs.

(2) The size of contracts or subcontracts below which any particular provision of this section shall not apply.

(3) The circumstances, if any, under which a contractor or subcontractor is not subject to this section.

(4) Criteria for determining the appropriate plant, region, division, or other unit of a contractor's or subcontractor's operation for which a nondiscrimination program is required.



(5) Procedures for coordinating the nondiscrimination requirements of this section and its implementing rules and regulations with the California Plan for Equal Opportunity in Apprenticeship, with the provisions and implementing regulations of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, and with comparable federal laws and regulations concerning nondiscrimination, equal employment opportunity, and affirmative action by those who contract with the United States.

(6) The basic principles and standards to guide the department in administering and implementing this section.

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, that program may be filed with the department, instead of any nondiscrimination program regularly required by this section or its implementing rules and regulations. Such a program shall constitute a prima facie demonstration of compliance with this section. Where the department or a federal compliance agency has required the preparation of an affirmative action, equal employment, or nondiscrimination program subject to review and approval by the department or a federal compliance agency, evidence of such a program shall also constitute prima facie compliance with an ordinance or regulation of any city, city and county, or county which requires an employer to submit such a program to a local awarding agency for its approval prior to becoming a contractor or subcontractor with that agency.

(f) Where the department determines and certifies that the provisions of this section or its implementing rules and regulations are violated or where the commission, after hearing an accusation pursuant to Section 12967, determines a contractor or subcontractor is engaging in practices made unlawful under this part, the department or the commission may recommend appropriate sanctions to the awarding agency. Any such recommendation shall take into account the severity of the violation or violations and any other penalties, sanctions, or remedies previously imposed.

## **Chapter 9**

### **MISCELLANEOUS**

#### **§12993. Construction of part; continuation of Civil Rights Law and other laws relating to discrimination; effect on retirement, pension and other plans; Unruh Civil Rights Act**

(a) The provisions of this part shall be construed liberally for the accomplishment of the purposes of this part. Nothing contained in this part shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this state relating to discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental

disability, medical condition, marital status, sex, age, or sexual orientation, unless those provisions provide less protection to the enumerated classes of persons covered under this part.

(b) Nothing contained in this part relating to discrimination in employment on account of sex or medical condition shall be deemed to affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan, provided the terms or conditions are in accordance with customary and reasonable or actuarially sound underwriting practices.

(c) While it is the intention of the Legislature to occupy the field of regulation of discrimination in employment and housing encompassed by the provisions of this part, exclusive of all other laws banning discrimination in employment and housing by any city, city and county, county, or other political subdivision of the state, nothing contained in this part shall be construed, in any manner or way, to limit or restrict the application of Section 51 of the Civil Code.

#### **§12993.5. Construction with Civil Code Section 51.7**

Notwithstanding Section 12993, nothing contained in this part shall be construed, in any manner or way, to limit or restrict the application of Section 51.7 of the Civil Code.

#### **§12995. Construction; title or other interest; postsecondary student housing; selection on non-protected basis; preferential or quota basis; public nuisance law enforcement**

(a) Nothing contained in this part relating to discrimination in housing shall be construed to:

(1) Affect the title or other interest of a person who, prior to the granting of relief, purchases, leases, or takes an encumbrance on a housing accommodation in good faith and without either knowledge or actual notice of the filing of a complaint with the department or of a civil action.

(2) Prohibit any postsecondary educational institution, whether private or public, from providing housing accommodations reserved for either male or female students so long as no individual person is denied equal access to housing accommodations, or from providing separate housing accommodations reserved primarily for married students or for students with minor dependents who reside with them.

(3) Prohibit selection based upon factors other than race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, or other basis prohibited by the Unruh Civil Rights Act.

(4) Promote housing accommodations on a preferential or quota basis.

(b) Nothing contained in this part relating to discrimination in housing shall affect the nondiscriminatory enforcement of state and local public nuisance laws, provided that those laws do not otherwise conflict with the provisions of this part.

#### **§12996. Severability**

If any clause, sentence, paragraph, or part of this part relating to discrimination in employment or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this part and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved.